IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 20.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

and

The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.282 of 2006

Kannan @ Mayakannan ... Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Prohibition and Excise Department,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records of the detention order made in memo BDFGISV No.15/2006 dated 19.01.2006 passed by the Commissioner of Police, Greater Chennai, the second respondent herein and set aside the same and direct the respondent to produce the detenu Kannan @ Mayakannan, Son of Azhagarsamy, now confined in Central Prison, Chennai before this Court and set him at liberty.

For Petitioner : Mr.G.L.Sankaran for
M/s.R.Balakrishnan &
S.Muralidharan.

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P. SATHASIVAM, J.)

The petitioner, by name Kannan @ Mayakannan, who was detained as a "Goonda" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated

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19.01.2006, challenges the same in this Petition.

2. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel for the petitioner submitted that there was delay in disposal of the representation of the detenu, which vitiates the ultimate order of detention. In this case, the representations were sent on 06.02.2006 and 23.03.2006. The particulars furnished by the Additional Public Prosecutor show that there was no let up at any stage. The representation was processed at every stage expeditiously and after due consideration, it was rejected and it was also communicated to the detenu. On verification of those details, we are satisfied that there is no undue delay as claimed by the counsel for the petitioner.

4. The learned counsel for the petitioner has submitted that the representation dated 26.01.2006 addressed to the detaining authority was not considered and not placed before the Advisory Board. It is not in dispute that the detention order was passed on 19.01.2006 and it is also brought to our notice that the said detention order was approved by the Government on 30.01.2006. In the meanwhile, a representation was made on 26.01.2006 to the detaining authority. In such circumstances, if any representation is made to the detaining authority before the order of approval is passed by the Government, it is but proper on the part of the detaining authority to consider the same. The particulars furnished show that the said representation received by the detaining authority on 27.01.2006 and on 28.01.2006, after considering the same, the detaining authority has rejected it, which was communicated to the detenu. The learned Additional Public Prosecutor has also placed the files relating to the proceedings of the Advisory Board , which also show that the representation dated 26.01.2006 was placed before the Board and the Board, after due consideration, approved the order of detention and rejected the representation. Accordingly, there is no substance in the contention raised by the learned counsel for the petitioner.

5. The learned counsel for the petitioner has submitted that the ground case relates to an occurrence dated 12.01.2006. The offences committed are under Sections 336, 323, 307, 385, 427 and 506(ii) IPC. It is the grievance of the counsel for the petitioner that in respect of the offence under Section 323, in the absence of proper medical certificate by the Government Doctor, it is presumed that there is no material to substantiate the same and this aspect was not considered by the detaining authority. As against this, the learned Additional Public Prosecutor has brought to our notice that even in the complaint, the complainant has specifically stated that he was beaten up by the detenu; the same is available in the FIR and the same is reiterated by the complainant in the statement recorded under Section 161 Cr.P.C. Merely because there is no medical certificate from the Doctor concerned, it cannot be claimed that there is no offence made out under Section 323 IPC.

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6. The learned counsel for the petitioner, by drawing our attention to the Tamil version of remand order, contended that there is no proper translation of the copies of the documents supplied to the detenu and therefore, he was unable to understand the documents which were supplied to him. We verified the English version of the remand order as well as the Tamil version supplied to the detenu. We are satisfied that the Tamil version also conveys the same meaning of the English version, accordingly, we reject the said contention also.

7. Finally, the learned counsel for the petitioner has submitted that there is a discrepancy in respect of the ground case. In the light of the various infirmities, he pointed out that though according to the respondents the detenu was arrested on 12.01.2006 at 1300 hours and brought to the Station at 1400 hours, the confession statement shows that the same was recorded at 1310 hours, which contained all the details, including the offence, the crime number etc. We verified all the required details. The particulars available in the file amply show that the detenu was arrested at 1300 hours on 12.01.2006 and he was taken to the Police Station at 1400 hours. The confession statement of the witness shows that the same was recorded at 1310 hours. It is the explanation of the learned Additional Public Prosecutor that the confession statement was recorded at the spot where he was arrested. Though there is minor discrepancy in the statements of the witnesses and the time mentioned in those documents, we are of the view that in the light of the specific statement made in the confession, which was duly recorded, the minor discrepancy would not affect the ultimate order passed by the detaining authority. Accordingly, we are unable to accept the said contention also.

8. In the light of what is stated above, we do not find any ground for interference. Accordingly, the Habeas Corpus Petition fails and the same is dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1.The Commissioner of Police, Greater Chennai, Chennai.

2.The Secretary to Government of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

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3.The Superintendent, Central Prison, Chennai.
(In duplicate for communication to the petitioner)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. R.Balakrishnan, Advocate SR NO. 25762

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